IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

WP(C).No. 22839 of 2006(R)

PETITIONER:

M.P. KAUSALYA, AGED 33 YEARS,
D/O.M.P.RAGHAVAN, HINDI TEACHER, POOMANGALAM U.P. SCHOOL, P.O. PANNIYOOR, TALIPARAMBA TALUK, KANNUR DISTRICT.

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS:
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1. V.K. SANTHAKUMARI,
HINDI TEACHER, POOMANGALAM U.P. SCHOOL,PANNIYOOR, TALIPARAMBA TALUK, KANNUR DISTRICT.

2. THE ASSISTANT EDUCATIONAL OFFICER,
TALIPARAMBA NORTH, KANNUR DISTRICT.

3. THE MANAGER,
POOMANGALAM U.P.SCHOOL, PANNIYOOR, TALIPARAMBA TALUK.

4. SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION, THIRUVANANTHAPURAM.

BY ADV. SRI.C.P.SAJI
GOVT.PLEADER SMT.M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE APPOINTMENT ORDER ISSUED BY R3 TO THE PETITIONER.**
EXT.P2	**TRUE COPY OF THE JUDGMENT IN O.P.NO.20061/02 OF THIS COURT.**
EXT.P3	**TRUE COPY OF THE ARGUMENT NOTE.**
EXT.P4	**TRUE COPY OF THE GOVT. ORDER DATED 14-6-06**
EXT.P5	**TRUE COPY OF THE TELEGRAM DTD. 20-11-02**
EXT.P6	**TRUE COPY OF THE PETITION SUBMITTED BY THE MANAGER, POOMANGALAM UP SCHOOL TO R4**
EXT.P7	**TRUE COPY OF THE STATEMENT DTD. 12-12-02**
EXT.P8	**TRUE COPY OF THE COMMUNICATION DTD. 30-07-03**
EXT.P9	**TRUE COPY OF THE SUSPENSION ORDER.**
EXT.P10	**TRUE COPY OF THE LETTER ISSUED BY THE MANAGER TO THE AEO, TALIPARAMBA.**
EXT.P11	**TRUE COPY OF THE COUNTER AFFIDAVIT ISSUED TO THE PETITIONER BY R2**
EXT.P12	**TRUE COPY OF THE ORDER ISSUED BY THE MANAGER.**
EXT.P13	**TRUE COPY OF THE ORDER DATED 3-6-02 ISSUED BY THE MANAGER TO R1**
EXT.P14	**TRUE COPY OF THE A/D CARD ISSUD BY THE MANAGER TO HEADMASTER.**
EXT.P15	**TRUE COPY OF THE STATEMENT ISSUED TO THE MANAGER.**
EXT.P16	**TRUE COPY OF THE CORRESPONDENCE MADE BY THE MANAGER TO THE AEO, TALIPARAMBA**
EXT.P17	**TRUE COPY OF THE COMMUNICATION ADMITTED BY THE MANAGER TO THE PETITIONER.**
EXT.P18	**TRUE COPY OF THE COMPLAINT BEFORE THE CIRCLE INSPECTOR OF POLICE, TALIPARAMBA**
EXT.P19	**TRUE COPY OF THE REJECTION ORDER DTD. 11-1-03**

RESPONDENT'S EXHIBITS

EXT.R1(A)	**TRUE PHOTOCOPY OF THE APPOINTMENT ORDER DTD. 16-1-02**
EXT.R1(B)	**TRUE COPY OF THE ORDER NO.C/1404/04/K.DIS. DTD. 5-4-04**
EXT.R1(C)	**TRUE COPY OF THE STATEMENT RECORDED BY THE MAGISTRATE DTD. 18-5-06 IN M.P.NO.3311/06**

W.P.C.No.22839/06

EXT.R1(D) **TRUE COPY OF THE ORDER IN CR.M.P.NO.3311/06 DTD. 18-5-06**

EXT.R1(E) **TRUE COPY OF THE REQUEST OF R1**

EXT.R1(F) **TRUE COPY OF THE REPRESENTATION OF R1**

EXT.R1(G) **TRUE COPY OF THE REPLY OF THE A.E.O.**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C)No. 22839 of 2006

Dated this the 13th day of February, 2007

J U D G M E N T

Petitioner challenges Ext.P4 order . Ext.P4 is an order passed by the Government in revision. This is pursuant to Ext.P2 judgment.

Case of the petitioner in brief is as follows:

Petitioner was appointed as Hindi teacher vide Ext.P1. Ext.P1 is purported to be issued by the third respondent. Third respondent is the manager of the school. According to the first respondent, third respondent has issued her an order appointing her in a leave vacancy for the period from 06-10-1997 to 09-12-1997. That is not approved. She claimed she was appointed against the regular vacancy. She approached this court by filing O.P.No.20061/02. That original petition came to be disposed of along with O.P.No.6906/1998 filed by Sri.Govindan.

Sri.Govindan was appointed in an additional post which was anticipated by the manager. However, that post was not sanctioned and approval was not granted. Case of the petitioner is that petitioner was appointed by order dated 16-07-2002 against the vacancy. Case of the petitioner as also her late mother-in-law who was the manager was that the appointment orders purported to have been issued by the manager in favour of the first respondent was not issued by the manager and they were forgeries. This court therefore permitted the first respondent to prefer a revision petition under Rule 92 before the Government regarding the grant of approval to her in the leave vacancy and also regarding her preferential claim against regular vacancy. It was infact, observed that since there is a controversy regarding the genuineness of the order appointing the first respondent, the issue should receive the attention of the authorities. It is pursuant to that Ext.P4 is issued. In Ext.P4 after noting that the appointment of Sri.Govindan was prior to the turn of the first respondent and that he had no preferential claim as the post anticipated was not

sanctioned, it was ordered that the appointment of the first respondent was to be approved and that she should have preferential claim under Rule 51A. Thereafter, it is held as follows:

> "On examining the contention put forth by the Manager, it is seen that there is no acceptable document/evidence to substantiate his averments against the Review Petition of the petitioner, particularly on the most crucial point that the appointment order (Exhibit P1) was not issued by the rightful Manager.)
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> In the above circumstances, Government order to approve the appointment of Smt.V.K.Santhakumari as Lower Grade Hindi Teacher in Poomangalam U.P.S., Panniyoor in the leave vacancy for the period from 6-10-1997 to 9-12-1997. As such the appointment in the regular vacancy from 3-6-2002 onwards as Lower Grade Hindi Teacher is also approved by virtue of her claim. It is also ordered that the teacher will be eligible for pay and allowances for the period she actually worked."

2. Petitioner takes exception to this finding. Learned

counsel for the petitioner Sri. M.V.Amaresan invited my attention to Ext.P5 telegram. In Ext.P5 telegram, there is a reference to the petition purportedly filed by the manager in relation to the appointment of the first respondent. Manager sent Ext.P6 petition pointing out that no such petition is filed by her. Ext.P7 is the statement allegedly filed by the manager denying the appointment. It is also stated therein that Smt.Indira who is the daughter of the manager and also a teacher in the said school has forged signature. Ext.P9 would show that Smt.Indira was placed under suspension.

3. Counter affidavit is filed by the first respondent. She has produced Exts.R1(a) to R1(g). Ext.R1(a) is the true photocopy of the appointment order dated 16-01-2002. It is contended that there are differences between Exts.P1 and R1(a) which are supposed to be the same. Ext.R1(b) is the order of the AEO who conducted the enquiry in respect of the suspension of Smt.Indira. Therein it was interalia noted that the Headmaster has stated as follows:

> " The Headmaster contended that the allegations furnished in the suspension order is no correct. All the appointments mentioned in the suspension order are issued by Smt.P.P.Lakshimi, the manager of the school. Being the head of the school he had verified the genuineness of the appointment order and personally consulted the Manager before permitting the teacher to join duty in the school. So the allegation of forging and falsifying document is baseless. Moreover, the Manager had visited the school frequently and make conversation with the staff including the above mentioned teachers, in my presence. The Manager had signed in the service book of Sri.M.K.Shaju for attesting the service verification in my presence. She had not raised any objections regarding the appointment of the teachers in these time. He stressed that he is sure that the signature in the appointment orders were affixed by the Manager and there is no question of forging of signature and falsification of documents."

4. There was a complaint that the manager was abducted by her daughter. In the statement given by the manager, it is

inter-alia stated that she is staying with her daughter at her own free will and and she will not reside with any other persons except Smt.Indira and she does not want to go with petitioner's husband. It is further stated that both petitioner and Indira are teachers working in the school. Ext.R1(d) is the order of the Magistrate where in it is indicated that petitioner's mother-in-law, the manager had expressed her willingness to stay along with her daughter. It is also stated that she is residing along with her daughter on her own free will. Ext.R1(e) is the request made by the first respondent.

5. Reply affidavit is filed producing Exts.P10 to P19. Ext.P10 is the petition purportedly addressed by the manager on 15-07-2002, wherein it is indicated that Smt.Indira and her husband together made the appointment of Smt.Santhakumari in the school. Ext.P11 is the counter affidavit filed by the manager in the writ petition leading to Ext.P2 judgment. Exts.P12 and P13 are orders of appointment issued purportedly in favour of the first respondent and produced to show that signature of the manager therein varies from the admitted signature. Ext.P15 is the

statement issued by the Headmaster before the Secretary. Therein it is indicated that documents for appointment of the first respondent was produced before him by Smt.Indira. It is also stated that order of appointment of the petitioner dated 16-07-02 was entrusted to him personally by the manager. Ext.P16 and P17 are communications of the manager to the Assistant Educational Officer.

6. Learned counsel for the petitioner would submit that it is a case where Ext.P4 was not passed in compliance with Ext.P2 judgment. There was a direction to consider the genuineness of the signature, which has not been complied with, it is submitted. The cryptic manner in which the order is written and without even sending the matter for expert opinion is sufficient to render the order bad, he submits. It is submitted by him that the matter may be remitted back with a direction to get expert opinion and then decide the crucial question of genuineness of the documents.

7. This is opposed by learned counsel for the first respondent. He would submit that petitioner is not entitled to get

any relief in the matter. He would submit that it is only after the husband of the petitioner came back from Gulf much after the appointment order issued in 1997 that there is a change in the situation.

8. Learned Government Pleader submits that it is to be noted that there is admittedly a leave vacancy in the year 1997.

9. I feel that I should not extend the benefit of he extraordinary jurisdiction under Article 226 to the petitioner. It is the admitted fact that there was a leave vacancy in the year 1997. It is very difficult to conceive that the said vacancy would have remained unfilled. In fact, in Ext.P2 judgment, the stand taken by the department in that case was that the reason for rejecting the approval was the pendency of the original petition filed by Sri.Govindan. In other words, a perusal of Ext.P2 would show that the stand of the department was that the approval proposal forwarded by the manager was received. It is to be noted that it probabalises the case of the first respondent that indeed the first respondent was appointed. It is not in dispute that petitioner's

husband was not in India at that time. Petitioner's husband is none other than the son of the manager. Petitioner did not make any effort before the Government in getting the matter decided by expert opinion. There is no case that a request was made and it was rejected by the Government. That apart there is another circumstance namely the stand taken by the Headmaster before the AEO in proceedings relating to the suspension of Smt.Indira as evident from Ext.R2(b). I have already extracted the said stand. No doubt Ext.P15 statement is pressed into service by the learned counsel for the petitioner. Ext.P15 is in the year 2006 before the Government. Statement made before the DEO by the Headmaster is the first statement closer in point of time. I cannot totally ignore the nature of the relationship between the petitioner and the manager. No doubt, as I have already indicated that there is no discussions as such in entering finding by the Government. It is pointed out by learned counsel for the first respondent that there are differences between Exts.P1 and R1(a). I note that there are differences between Exts.P1 and R1(a). Learned counsel for the

petitioner explains that there are three copies of the original order of appointment. I would think that in the totality of the circumstances, the writ petition is only to be dismissed. Accordingly, it is dismissed.

(K.M.JOSEPH,JUDGE)

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